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No. 84-791

IN THE

Supreme Court of the United States

October Term 1984

ROBERT GALLAHER, RUTH SCHAPER, MARY MURTHA, THE PARISHIONERS OF ST. MARY'S CHURCH, AND ST. MARY'S PARENTS CLUB, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED,

Petitioners,

—against—

ROMAN CATHOLIC ARCHBISHOP OF SAN FRANCISCO, THE MOST REVEREND JOHN R. QUINN, DOES ONE THROUGH TEN,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FIRST APPELLATE DISTRICT, DIVISION TWO

RESPONDENT'S BRIEF IN OPPOSITION

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1984

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STATEMENT OF THE CASE

Respondent does not find Petitioners' Statement of the Case to be satisfactory and, therefore, sets out its own presentation.

Contrary to Petitioners' assertion in their State-

ment, Petitioners were not the "owners in fact" of the properties which are the subject of this dispute. In fact, ownership of the subject property is the very issue presented by this case.

Respondent Roman Catholic Archbishop of San Francisco, a corporation sole, established the St. Mary's parish in 1891 as a national parish to service the German-speaking people of San Jose, California. In 1979, when the parish church was partially destroyed by arson and approximately $700,000 in fire insurance proceeds were collected by Respondent, a dispute arose over the disposition of these funds and the future of the parish. Respondent, despite its power under Canon Law to close a parish at any time, established a special committee comprising representatives of the parish, the archdiocese, local pastors and school personnel, and the Jesuit order which operated St. Mary's. Excepting its parish representatives, the committee voted to close the parish because a German national parish was no longer necessary due to the assimilation of these parishioners into the community and because there was a growing scarcity of priests and parish support staff and other numerous economic or administrative concerns. Respondent followed the committee's recommendation. The parish was closed on June 30, 1980.

Meanwhile, in December, 1979, Petitioners, a few parishioners and members of the St. Mary's Parents' Club, filed a class action, asserting that Respondent held the parish properties in trust for the parishioners and that Respondent had converted the fire insurance proceeds. The Petitioners sought a preliminary injunction, declaratory relief, and an accounting.

Respondent answered, denying each allegation and

asserting the defenses of the Statute of Frauds and failure to state a cause of action. It was also contended that the relief which the parishioners sought was barred by the First Amendment.

In a hearing on the motion for a preliminary injunction against the razing of the parish church, Respondent admitted into evidence two title reports. Title documents corresponding to the church, the rectory and church parking lot showed that all these properties were held by Respondent in fee simple absolute without any restrictions or covenants. Title documents corresponding to the parish school and playground showed that both were owned in fee simple absolute without restrictions or covenants by the Roman Catholic Welfare Corporation, a religious corporation, which is not a party to this action. Respondent had deeded these properties to the Welfare Corporation in 1954.

An affidavit by Reverend Kirby C. Hanson, Assistant Chancellor of the Archdiocese, and the testimony of Father Raymond Decker disclosed a search of the archdiocese's records finding no trust documents between Respondent or Welfare Corporation and the parish. Decker also testified that the Roman Catholic Church is a hierarchical church in which authority and administration is pyramidical in form, vested in the archbishops under the "uno-jurisdiction" of the pope. In the nineteenth century during a period of "Trusteeism" when parishioners felt that they should have trust and possession of parishes, the church sought to avoid formation of parishes in a trust manner and instead utilized the corporation sole theory so as "to retain the basic theological premise of the hierarchical form of the church which . . . separates it from a con-

gregational form of church." The Archbishop of San Francisco was established as a corporation sole in 1854. It was also disclosed at the hearing that Respondent was the named insured for the fire insurance policy covering St. Mary's parish. That policy was part of its asset protection program covering 152 parishes and 22 institutions in the archdiocese.

On July 17, 1980 the motion for a preliminary injunction was denied.

Respondent thereafter moved for summary judgment based on the notice, pleadings, records, and files of the previous proceedings, and the matter was heard on December 3, 1980. In opposition, Petitioners merely filed an affidavit by parishioner William Dreischmeyer. Respondent's Motion for Summary Judgment was granted on December 8, 1980. The church, parish school and rectory were subsequently demolished.

On January 13, 1981 Petitioners filed a Notice of Appeal with the California Court of Appeal. On June 14, 1984, the Court of Appeal issued its opinion affirming the judgment of the trial court. Petitioners filed a petition for rehearing in the Court of Appeal on June 28, 1984, which was denied on July 13, 1984. Thereafter, on July 24, 1984, Petitioners filed a Petition for Hearing in the Supreme Court of California which was denied on August 22, 1984.

SUMMARY OF ARGUMENT

This case presents a state law question resolved by an intermediate court, after which the California Supreme Court declined review, and is, therefore, not "certworthy."

The issues presented are not important questions of constitutional law as indicated by the fact that certiorari has been denied by this Court in two recent and closely analogous cases.

The state court's decision is in harmony with the decisions of this Court in *Jones* and the decision of the California Court of Appeal in *Presbytery of Riverside.*

The issue is whether Petitioners, who have no property right in the disputed properties under California law, can overrule the decision of the Archbishop of a hierarchical religious denomination and the fee simple owner of the properties to close and not rebuild the church and church school destroyed by fire.

Contrary to Petitioners' assertions, the state court's decision was not based on the form of the church but on the manner in which title to the properties was held, and the Court of Appeal did in fact apply the "neutral principles of law" approach of *Jones.*

Thus, the Petition should be denied.

REASONS FOR DENYING THE WRIT

POINT ONE

THIS CASE PRESENTS A STATE LAW QUESTION RESOLVED BY AN INTERMEDIATE COURT AND IS NOT "CERTWORTHY."

This case presents a state law question resolved by an intermediate court, after which the California Supreme Court declined discretionary review.[1] It is, therefore, not "certworthy."

[1] Order of the California State Supreme Court, Appendix page 1a.

In addition, the issues presented are not important questions of constitutional law as indicated by the fact that certiorari has been denied by this Court in two recent and closely analogous cases. *Streumph v. McAuliffe*, 661 S.W. 2d 559 (Mo. App. 1983) cert. denied, 104 S. Ct. 2659 (1984); *Galich v. Catholic Bishop of Chicago*, 75 Ill. App. 3d 538, 394 N.E. 2d 572 (1979), cert. denied, 445 U.S. 916 (1980).

POINT TWO

THE DECISION BELOW IS FULLY IN ACCORD WITH THE DECISIONS OF THIS COURT AND THOSE OF THE STATE OF CALIFORNIA.

The Petition for Writ of Certiorari should be denied because the questions decided by the State Court of Appeal had been previously settled by this Court and the Court of Appeal's decision is in harmony with prior decisions of this Court, as well as those of the State of California.

Essentially Petitioners' argument in support of their Petition is that the California Court of Appeal did not apply the "neutral principles of law" approach, approved by this Court in *Jones v. Wolf*, 443 U.S. 595 (1979) and applied by the California Court of Appeal in *Presbytery of Riverside v. Community Church of Palm Springs*, 89 Cal. App. 3d 737, 152 Cal. Rptr. 954 (1979), in the resolution of a property dispute arising within a religious context. Petitioners contend that the State Court of Appeal in effect impermissibly adopted a rule for the resolution of disputes occurring in a hierarchical church, as in this case, namely, "auto-

matic approval of church-related property decisions made by the highest decision making body of a hierarchical church,"[2] while another rule, i.e., "neutral principles of law," would be applied in the resolution of disputes occurring in a congregational church. Petitioners maintain that such disparate treatment, based on the form of the church, results in (1) a denial of equal protection to members of a hierarchical church, and (2) a violation of the First Amendment's proscription against the State's establishment of religion. Contrary to Petitioners' assertions, however, the Court of Appeal (1) did not base its decision on the form of the church, and (2) did in fact apply the "neutral principles of law" approach, as more fully discussed herein.

The Decision Of The Court Of Appeal Was Not Based On The Form Of The Church But On The Manner In Which Title Was Held.

Petitioners erroneously conclude that the rules applied by the Court of Appeal were based on the form of the church. This conclusion appears to be based, in part, on a misreading of a footnote[3] contained in the Court of Appeal's opinion distinguishing the facts of this case from those in *Presbytery of Riverside v. Community Church of Palm Springs, supra.* In *Presbytery,* the "general church" brought an action against the "local church" for ejectment, recovery of such property, and quiet title in the general church, after the local church had withdrawn from the general church due to dissatisfaction with general church policy. The

[2] Petition for Certiorari page 13.

[3] See Petition for Certiorari page 11, and see Opinion of the Court of Appeal, Appendix to Petition for Certiorari page 28a, Fn. 6.

general church claimed that the local church property was held "in trust" for the general church. The Court of Appeal affirmed the trial court's judgment for the local church, finding it was the true owner of the church property, based on "neutral principles of law" in that title to the church property was held by the local church. Thus, *Presbytery* is distinguishable from the instant case, not on the basis of the form of the church, but on the basis of the manner in which title to the properties involved were held. *Presbytery* involved a "congregational church" in which the local churches actually own the church property and are governed only in an ecclesiastical sense by the general church, as distinguished from a truly "hierarchical church", as in this case, in which the local churches are not only governed from above but all local church property is vested in and owned by the archdiocese.

The Court Of Appeal Applied The Neutral Principles Of Law Approach.

In addition to the foregoing, Petitioners ignore the fact that the Court of Appeal applied both the polity analysis of *Watson v. Jones*, 80 U.S. 679 (1872) *and* the "neutral principles of law" approach in *Jones v. Wolf*, *supra*.

In *Jones*, this Court held that a state *may* adopt the "neutral principles approach," or a rule of "compulsory deference to religious authority" or "any one of the various approaches for settling church property disputes so long as it involves no consideration of doctrinal matters, whether the ritual and liturgy of worship or the tenets of faith." *Jones*, *supra* at page 602.

The so-called "neutral principles of law" analysis enunciated in *Jones* involves a consideration of the deeds, the terms of the local church charters, state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property. *Id.* at page 603.

The record before the Court of Appeal included title documents of the church, the rectory and church parking lot, which showed that all three properties were held by Respondent in fee simple absolute without any restrictions or covenants. In addition, title documents corresponding to the parish school and playground showed that both were owned in fee simple absolute without restrictions or covenants by the Roman Catholic Welfare Corporation, a religious corporation, which is not a party to this action. Respondent had deeded these properties to the Welfare Corporation in 1954. An affidavit by Reverend Kirby C. Hanson, Assistant Chancellor of the Archdiocese, and the testimony of Father Raymond Decker disclosed a search of the archdiocese's records finding no trust documents between Respondent or Welfare Corporation and the parish. It was also disclosed at the hearing on the motion for a preliminary injunction that Respondent was the named insured for the fire insurance policy covering St. Mary's parish.[4]

The Court of Appeal, after reviewing the record, concluded that "Title to the disputed real properties is held solely by respondent without restriction, covenants or conditions. Regarding the insurance proceeds, [Petitioners] have admitted in their complaint that re-

[4] Opinion of the Court of Appeal, Appendix to Petition for Certiorari pages 4a, 5a, 7a.

spondent is the 'named insured' under the fire insurance policy."[5]

Having completed its application of the "neutral principles approach", and concluding that unrestricted title to the disputed real properties was held solely by Respondent and that there was no express trust between the parties, a fact admitted by Petitioners,[6] the Court of Appeal considered Petitioners' contention that the "neutral principles of law" approach should be applied to their theory of a constructive trust set forth in their complaint.

In their first two causes of action, Petitioners alleged that Respondent induced conveyances of the properties corresponding to the church, the rectory and the church parking lot in 1891 and 1898 by representing that title would be taken in trust and that the church would be maintained in perpetuity. The third cause of action alleged that Respondent acted as the parishioners' agent in procuring and holding a fire insurance policy and was wrongfully withholding the policy's proceeds. In the fifth cause of action Petitioners alleged that Respondent sold property constituting the school playground to the parishioners between 1928 and 1935, and that Respondent retained title to this lot for mere convenience.

The only paper filed in opposition to the motion for summary judgment was an affidavit by parishioner William Dreischmeyer. In substance, Dreischmeyer's affidavit stated only that he had always "believed"

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[5] Opinion of the Court of Appeal, Appendix to Petition for Certiorari pages 11a - 12a.

[6] Opinion of the Court of Appeal, Appendix to Petition for Certiorari page 18a.

that, because the moneys contributed by the parishioners had paid for the construction and maintenance of St. Mary's Church, the church belonged to the parishioners. Dreischmeyer's affidavit also stated that he contributed money "based upon implicit and explicit representations" of the parish priest that these contributions would be used for the cost of a fire insurance policy so that in case of fire the church could be rebuilt.

As to the first, second and fifth causes of action, the Court of Appeal held that Dreischmeyer's statements did not present facts concerning the alleged fraudulent conveyances of the church, rectory, parking lot and school properties, nor any facts regarding the asserted "purchase" of the school playground, but merely presented Dreischmeyer's "belief" that these properties were owned by the parish and that there had been a purchase of the school playground.

With respect to the fifth cause of action over the fire insurance policy and proceeds, the Court of Appeal ruled that although the pertinent statement contained in Dreischmeyer's affidavit might raise a factual issue whether Respondent made representations that the church would be rebuilt, that issue as framed by Petitioners could not be litigated in a civil court "without conflicting with the overriding principle that, in any religious property dispute, a civil court shall not resolve the religious controversy by reliance on religious precepts or determine an underlying religious dispute."[7] The Court of Appeal stated:

> "Here . . . the action seeks to imply a legal relationship based upon information drawn from the parties' conduct in giving and receivin' con-

[7] Opinion of the Court of Appeal, Appendix to Petition for Certiorari, page 25a.

> tributions over a one hundred year period. Our inquiry would require an examination of any oral assurances that respondent may have made which, in turn, would require interpretation in *both* a secular and religious context. Thus, our inquiry would entail an extensive consideration of religious doctrine and polity in violation of the First Amendment."[8]

In so ruling, the Court of Appeal relied on *Parent v. Roman Catholic Bishop of Portland*, 436 A. 2d 888 (Me. 1981), in which parishioners brought suit against the Roman Catholic Bishop upon the latter's decision to close the parish. In the action, the parishioners sought constructive trust relief based upon a confidential relationship between the parties arising from the bishop's alleged promises to provide parish services and the parishioners' placement of trust on the bishop. On appeal, the parishioners argued that the lower court had erred in granting summary judgment in favor of the bishop in that it had failed to apply the "neutral principles of law" approach to their constructive trust theory. In affirming the summary judgment, the Supreme Judicial Court of Maine noted that the record plainly revealed that the parishioners had no legal title to the property in question, and concluded that, in the absence of any written evidence of a collateral legal obligation which conditioned or restricted the bishop's use and control of the disputed properties, the litigation could not be resolved without impermissibly passing upon the doctrines and practices of the religious organization. *Id.* at page 890. The court stated:

> "Without the aid of a writing plainly evidencing conditions or restrictions on the bishop's use

[8] Opinion of the Court of Appeal, Appendix to Petition for Certiorari page 28a.

> of the . . . property and thus some legal basis for a legal or equitable right in the [parishioners], it is obvious that the Superior Court could not have resolved the dispute before it without passing on the doctrines and practices of the Roman Catholic Church. Ascertaining the content of any such parol agreement or trust – express or implied – would have required the court to determine the understanding of the parties concerning the meaning of any oral assurances the bishop may have made. It would have required the court to draw inferences from the conduct of both parties over the years in giving and receiving contributions to the church. Such inquiries would have embroiled the court in extensive consideration of religious doctrine, polity and administration."

Id. at page 891.

In sum, the Court of Appeal applied the "neutral principles approach," concluding that the record plainly revealed that Petitioners had no legal title to the properties in question, and properly refrained from considering any parol evidence of a trust since such an inquiry would have impermissibly entangled the court in matters of religious doctrine and polity. Thus, since Petitioners argument in support of their Petition is premised solely on the fallacious assumption that the Court of Appeal did not apply the "neutral principles approach", the Petition should be denied.

CONCLUSION

For all of the foregoing reasons, we respectfully submit that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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(Appendix follows)

APPENDIX "1"

ORDER OF THE CALIFORNIA SUPREME COURT
DENYING HEARING

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

AUG 22 1984

I have this day filed Order _____

HEARING DENIED

In re: 1 Civ. *No.* 52478

ROBERT GALLAHER, et al.

vs.

Roman Catholic Archbishop of San Francisco, et al.

Respectfully,

Clerk

BEST AVAILABLE COPY